

In re Paul Moe,

Paul Moe

V.

Budget Rent A Car System, Inc.,

Plaintiff,

Defendant.

ALL DOCUMENTS REGARDING THIS MATTER MUST BE IDENTIFIED BY BOTH ADVERSARY AND BANKRUPTCY CASE NUMBERS.

Chapter 13

Bankruptcy Case No. 10-39625-SVK

Adversary Proceeding No.

Address of Clerk

Name and Address of Plaintiff's Attorney

Address

Date: _____

By: _____, Deputy Clerk

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN**

In re Paul Moe,)	
)	
Debtor.)	
Address)	Bankruptcy Case No. 10-39625-SVK
8565 South Parknoll Drive)	
Oak Creek, WI 53154)	
)	
Social Security Number)	
xxx-xx-9191)	
)	Adversary Proceeding No.
)	
Paul Moe,)	
)	
Plaintiff)	
)	
v.)	
)	
Budget Rent A Car System, Inc.,)	
)	
Defendant.)	

COMPLAINT FOR VIOLATION OF THE AUTOMATIC STAY

Plaintiff, Paul Moe ("Mr. Moe"), through his attorney, Michael J. Maloney and the Watton Law Group (collectively "Counsel") complains of Defendant, Budget Rent A Car System, Inc. ("Budget Rent A Car") and alleges to the best of his knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the following:

INTRODUCTION

Nature of the Action

1. This is the second lawsuit to attempt to force Budget Rent A Car to comply with this Court's Orders. The Court previously entered Judgment against Defendant in the amount of \$2,000.00. This was apparently insufficient to compel their compliance.

Michael J. Maloney, Esq.
Watton Law Group
700 North Water Street
Suite 500
Milwaukee, WI 53202
Telephone (414) 273-6858
Facsimile (414) 273-6894

2. This lawsuit arises from the collection attempts made by Budget Rent A Car, despite Debtor having filed a Chapter 13 Bankruptcy, an automatic stay having been imposed, and Budget Rent A Car having received notice. This is the second lawsuit filed against Budget Rent A Car to attempt to compel compliance with the automatic stay.

3. Cause of Action herein is brought against Budget Rent A Car under the United States Bankruptcy Code, ("Bankruptcy Code"), 11 *U.S.C.* §101 *et seq* for violation of the automatic stay.

Jurisdiction and Venue

4. Pursuant to Bankruptcy Rule 7008, this is a core proceeding as defined in 28 *U.S.C.* §157(b)(2)(A), and (O). This proceeding relates to 11 *U.S.C.* §362(a)(1),(3),(6). In the event this is considered a non-core proceeding, Plaintiff consents to jurisdiction.

5. Bankruptcy Rule 7001(1) and (7) require an action of this nature to be filed as an adversary proceeding.

6. Mr. Moe filed his petition for relief under Chapter 13 of the Bankruptcy Code on December 13, 2010. This Court has jurisdiction under 28 *U.S.C.* §1331 and 28 *U.S.C.* §1334.

Parties

7. Mr. Moe is a debtor currently residing at 8565 South Parknoll Drive, Oak Creek, WI 53154.

8. Budget Rent A Car is a Foreign Business Corporation with a principal office at 6 Sylvan Way, Parsippany, NJ 07054 and whose registered agent is CSC-Lawyers Incorporating Service Company, with offices at 25 West Main Street, Madison, WI 53703.

BACKGROUND

9. Sometime prior to the filing of the above referenced bankruptcy, Mr. Moe incurred a debt to Budget Rent A Car (the "debt").

10. Mr. Moe filed for relief under Chapter 13 of Title 11 on December 13, 2010. (Exhibit A)
11. Budget Rent A Car is properly listed on Mr. Moe's Schedule F as a general unsecured creditor. (Exhibit B)
12. On December 16, 2010, the Clerk of the Bankruptcy Court noticed Mr. Moe's bankruptcy to Budget Rent A Car at the address listed in his Schedule F. (Exhibit C)
13. Budget Rent A Car received notice of the Debtor's bankruptcy filing.
14. On December 24, 2010, January 7, 2011, January 22, 2011 and February 6, 2011, Budget Rent A Car mailed letters to Mr. Moe which demanded that he pay the debt owed. (Exhibit D)
15. The letters mailed to Mr. Moe, post-petition by Budget Rent A Car, contain the same address that was listed on Mr. Moe's Schedule F, and to which the Clerk of the Bankruptcy Court mailed the bankruptcy notice.
16. On March 18, 2011 Counsel, on behalf of Mr. Moe filed an adversary proceeding for violation of the Automatic Stay and Violation of the Wisconsin Consumer Act.
17. On June 27, 2011, the Court entered an Order Granting the Motion for Default Judgment and awarded Mr. Moe a judgment in the amount of \$2,000.00.
18. On October 18, 2011 Budget Rent A Car forwarded \$2,000.00 to their counsel to satisfy the judgment.
19. On January 29, 2012 and February 23, 2012 Budget Rent A Car continued to mail letters to Mr. Moe which demanded that he pay the debt owed. (Exhibit E)
20. Budget Rent A Car is still attempting to collect this debt.

Count 1 - Willful Violation of the Automatic Stay

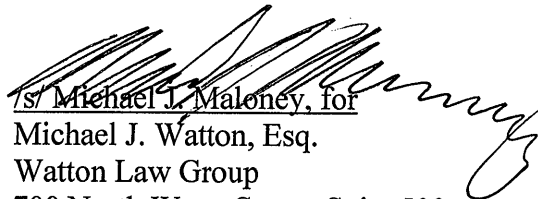
21. Mr. Moe restates all above allegations.
22. Upon filing of his Chapter 13 bankruptcy on December 13, 2010 the Automatic Stay applied to all of Mr. Moe's creditors.

23. Budget Rent A Car is a creditor.
24. Budget Rent A Car has neither sought nor received relief from the Automatic Stay.
25. Budget Rent A Car knew or should have known of Mr. Moe's bankruptcy.
26. Budget Rent A Car willfully violated the Automatic Stay (11 U.S.C. §362(k)(1)) through the attempted collection of the debt.
27. Mr. Moe has been damaged by Budget Rent A Car's intentional, outrageous and egregious violation of the Automatic Stay.
28. Mr. Moe seeks to recover actual damages, including costs and attorneys' fees and punitive damages from Budget Rent A Car due to its willful violation of the Automatic Stay as set forth in 11 U.S.C. §362(k)(1).

WHEREFORE, Debtor prays that this Court will enter an Order:

- A. declaring Budget Rent A Car in violation of the Automatic Stay put into effect on December 13, 2010 and enjoining future violations of the same,
- B. awarding Mr. Moe actual damages, including attorneys' fees and punitive damages for the actions of Budget Rent A Car,
- C. granting such additional relief as it deems necessary or proper.

Dated this 14 day of March, 2012


/s/ Michael J. Maloney, for
Michael J. Watton, Esq.
Watton Law Group
700 North Water Street, Suite 500
Milwaukee, Wisconsin 53202